

**BOARD OF OPTOMETRY  
SUPPLEMENT TO THE  
INITIAL STATEMENT OF REASONS**

Subject Matter of Proposed Regulations:

Citable Offenses.

(1) Section Amend: 1579.

Specific Purpose of each adoption, amendment, or repeal:

1. California Code of Regulations (CCR) Section 1579 establishes Cite and Fine authority for violation of laws and regulations specifically identified in that Section. In its current form, CCR 1579 must be amended each time there is an applicable law or regulation change. In cases where there is a violation of a law or regulation that is not listed in CCR 1579, the Board of Optometry does not have authority to issue a citation and/or fine. This amendment will eliminate the specificity of the existing language and create categories of violations thus eliminating the need for ongoing amendments in response to future changes in optometry law.
2. Business and Professions Code 129.5 and 148 (all section references are to that Code) authorize the Board to assess an administrative fine up to \$5,000. Previously, section 129.5 authorized the Board to assess an administrative fine up to \$2,500. Although the Board has the authority to assess a fine up to \$5000, it decided that it should stay within the original \$2,500 fine amount unless there were extenuating factors that warranted the imposition of a higher fine, i.e., between \$2501 - \$5,000. Accordingly, the maximum range of fines for the "A," "B," or "C" citation are \$2,500. The fixing of the actual amount of a particular citation will depend upon factors specified in section 125.9(a)(3): the gravity of the violation, the good faith of the licensee, and the history of previous violations.

*"A" Citations*

"A" citations address persons who do not have an optometrist license, but who have engaged in the practice of optometry, i.e., unlicensed activity. The Legislature has declared that: "(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California. (b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state. (Section 145)

Because of the serious threat that unlicensed activity poses to the public, the Board decided that the minimum penalty for unlicensed activity needed to be sufficiently high to discourage such conduct, yet still provide a range in the fine amount that would allow discretion to take into consideration less egregious forms of unlicensed activity, e.g, inadvertent misrepresentation of licensed

optometric services. The Board believed that the minimum fine amount for an "A" citation of \$1500 would serve the dual purpose of discouraging unlicensed activity yet providing for reasonable minimum fine where warranted.

### *"B" Citations*

"B" citations address optometrists who have violated any statute or regulation that would be grounds for discipline by the Board that has caused financial, but not physical harm to a person. The Board defined the "B" citation to address violations that result in financial harm to a person, e.g., repeated acts of excessive diagnostic or therapeutic procedures (section 3110(n)). The Board did not believe a citation is appropriate where a violation has resulted in physical harm to a patient since the purpose of a citation is to address violations that normally do not warrant the revocation or suspension of a license.

The Board also included within the "B" citation category, a provision where a person who has committed a "C" citation violation, but had been issued a "C" citation in the previous three years would be subject to a "B" citation. Here the rationale was that such an "enhancement" provision would discourage persons being repeat offenders. The Board selected three years as the period in which "C" citation could be enhanced to a "B" citation based upon its three-year statute of limitations for prosecuting actions. Section 3137 provided that the Board shall have three years after it discovers the act alleged as grounds for discipline or seven years after the act occurs, whichever occurs first. (Section 3137). It felt that seven years would be excessive and three years would be long enough to act as a deterrent from repeated violations.

The Board selected \$500 as the lower range for the fine amount for the "B" citation based upon the current version of section 1579(b) that establishes the lower range of the fine amounts for "mid-range" violations as \$501.

### *"C" Citations*

"C" citations address optometrists who have violated any statute or regulation that would be grounds for discipline by the Board that has not caused either physical or financial harm to a person, e.g., failure to maintain adequate and accurate records (section 3110(q)). Again this citation category addresses violations that in and of themselves would not normally warrant an action to suspend or revoke a license. The Board felt that the lower range for a "C" citation should be less than the lower amount for the "B" citation based on the lesser severity of the "C" citation violation. The Board selected \$250 as the lower range for the fine amount for the "C" citation because it needed to be less than \$500 yet still be a significant amount to have a deterrent effect.

### *Enhancement Provisions*

Subsection (f) of the proposed amendment of section 1579 would allow the Board to increase fine amount for a citation to an amount between \$2,501 and \$5,000. As previously discussed, section 129.5 authorizes the Board to assess a fine up to \$5,000. The Board determined that the fines for citations should generally remain under \$2,500 unless there were extenuating circumstances. The Board determined that where a citation involved a violation that had an

immediate relationship to the health and safety of another person, the cited person had a history of two or more prior citation of the same or similar violation, the citation involves multiple violations that demonstrate a willful disregard of the law, or that the violation was perpetrated against a senior citizen or disable person. The Board believed that the enhancement factors related to violations that were willful or repeated similar nature that they could be characterized as intentional or they involved violations with potentially severe consequences.

With respect to violations involving fraudulent billings submitted to an insurance company or Medi-Cal or Medi-Care programs, section 125.9 specifically provides that citations for such violations not exceed \$5,000.

It is noted that citations are merely one of the enforcement tools available to the Board. While a particular violation may fall within the strict parameters of a particular citation category, it will be the individual facts of the case that determine if the case is appropriate for a citation or formal disciplinary action to suspend or revoke a license.